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PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference Case 21712 WO		FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/EP2004/002821		International filing date (day/month/year) 18.03.2004		Priority date (day/month/year) 27.03.2003
International Patent Classification (IPC) or national classification and IPC A61K9/16				
Applicant DSM IP ASSETS B.V. et al.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 06.10.2004		Date of completion of this report 15.02.2005		
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Giménez Miralles, J Telephone No. +49 89 2399-8655		



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/002821

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:

- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-9
as originally filed

Claims, Numbers

1-11
as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing *(specify)*:
- ☐ any table(s) related to sequence listing *(specify)*:

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing *(specify)*:
- ☐ any table(s) related to sequence listing *(specify)*:

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- ☐ the entire international application,
 - ☒ claims Nos. 1-11 partly
because:
 - ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
 - ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 - ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 - ☒ no international search report has been established for the said claims Nos. 1-11 partly
 - ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form
 - ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form
 - ☐ has not been furnished
 - ☐ does not comply with the standard
 - ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
 - ☐ See separate sheet for further details

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-11
Inventive step (IS)	Yes: Claims	
	No: Claims	1-11
Industrial applicability (IA)	Yes: Claims	1-11
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

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Re Item III

An incomplete international search has been carried out for the parts of the present claims 1-11 as construed in connection with the description and the examples, because the International Searching Authority considers that claims 1-11 (in part) lack support and/or disclosure over their whole scope and/or do not comply with the requirements of clarity and conciseness (Articles 5 and 6 PCT), thereby rendering a meaningful complete search impossible (see International Search Report, Box II.2).

The applicant's attention is drawn to the fact that claims relating to subject-matter in respect of which no international search report has been established need not be the subject of international preliminary examination (Rule 66.1(e) PCT). In this regard, the present opinion is restricted to the subject-matter mentioned in the International Search Report (Box II.2).

Re Item V

1. The relevant prior art documents are referred to as D1 to D16 as in the order of appearance in the International Search Report (ISR).
2. Citations and explanations supporting the statement with regard to novelty (N), inventive step (IS) and industrial applicability (IA) (Article 33(1) PCT):
 - (N) The subject-matter of claims 1-11 (in part) [see item III above] is not novel because it is anticipated by the prior art (Article 33(2) PCT):
D1 to D7 disclose methods for the preparation of microspheres (beadlets) on the basis of a gelatin-sugar matrix containing carotenoids, vitamins and/or polyunsaturated fatty acids, wherein the gelatin matrix is cross-linked by heat treatment after formation of the microspheres ("dry particulate" in the meaning of present independent claim 1). (See relevant passages mentioned in the ISR). Nothing new can be seen in the subject-matter as claimed in the present claims.
 - (IS) The subject-matter of claims 1-11 (in part) is not considered to involve an inventive step (Article 33(3) PCT) for the reasons mentioned above. Further, it is not inventive in the light of the disclosure of D8 to D15 taken in combination.

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- (IA) The subject-matter of claims 1-11 (in part) is industrially applicable (Article 33(4) PCT). The possibility of industrial application is beyond any doubt.